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COMMITTEE ON THE RIGHTS OF THE CHILD

Twenty-seventh session

SUMMARY RECORD OF THE 707th MEETING

Held at the Palais Wilson, Geneva,
on Tuesday, 29 May 2001, at 10 a.m.

Chairperson: Ms. SARDENBERG (Vice-Chairperson)

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Ms. Sardenberg, Vice-Chairperson, took the Chair

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Second periodic report of Guatemala (CRC/C/65/Add.10; CRC/C/Q/GUA/2; written replies of the Government of Guatemala to the questions in the list of issues (document without a symbol distributed in the meeting room in Spanish and English))

1. At the invitation of the Chairperson, the members of the delegation of Guatemala took places at the Committee table.

2. Ms. MUNDUATE GARCÍA (Guatemala), introducing the second periodic report of Guatemala (CRC/C/65/Add.10), said that significant socio-political changes had occurred in Guatemala in recent years, following the end of 36 years of civil war; a process of reconciliation was now under way. The search for a new consensus was reflected in the negotiations concerning a new Children's Code, intended to bring legislation into line with the principles contained in the Convention. While the matter had given rise to intense debate, the Children and Adolescents Code, adopted in 1996, had not entered into force. The Government had pledged its support to a more recent version of the Code, which had also been supported by various sections of civil society, including the churches. The harmonization of national legislation with the Convention remained on the Government's agenda.

3. Mortality rates for infants and children under the age of five had been almost halved, and further reductions remained a priority for the Government. The recent introduction of a reproductive health policy constituted an important step towards achieving that objective. The coverage of immunization programmes had increased from an average of 40 per cent in 1990 to 85 per cent in 2000. Polio had been eradicated, and only a single case of measles had been recorded in the previous five years. Although the number of cases was decreasing, malnutrition remained one of the main causes of death and disease, and had a negative impact on children's development. A review of the food security policy was currently being carried out by the Government, and the "Healthy Schools" project was being administered by the Ministries of Health and Education. Guatemala had gained international recognition for its pioneering approach to the fortification of sugar with vitamin A, and over 90 per cent of salt for human consumption was fortified with iodine.

4. The total proportion of children in primary education had risen from 35 per cent in 1990 to 81 per cent in 2000. Her Government had pledged to extend primary education still further by 2004, and to reduce the level of illiteracy, which had stood at 40 per cent in 2000, by 50 per cent. Families were being offered support to encourage children to remain in school rather than to enter employment. For instance, 2 million pupils qualified for free school meals, and 75,000 scholarships were available to promote the education of young girls. The provision of bilingual education was a key element in efforts to prolong school attendance, and textbooks

had recently been written in numerous indigenous languages to facilitate the task. The ongoing process of educational reform was designed to foster harmonious relations between peoples and cultures and to consolidate democracy, introducing topics considered by Truth Commissions such as "Guatemala, never again" and "Memory of Silence".

5. Although the new legal framework for juvenile justice had still to be introduced, the justice system had been making efforts to apply uniform criteria consistent with the Convention. Minors were entitled to legal assistance, and children were no longer found in adult prisons. Her Government was taking on wider responsibilities with a view to the eradication of child labour, sexual exploitation and the sale of drugs to children. It was also aware that reform was needed to ensure that adequate mechanisms existed to protect children from abuses of the adoption system. A draft law on adoption would be submitted to Congress for approval by the end of 2001.

6. Child abuse had only recently been recognized as a problem, and the National Commission against Child Abuse had been leading efforts to raise awareness of the issue since 1996. The Ministry of Social Welfare had begun to implement a programme designed to train judges, forensic specialists and paediatricians in how to determine proof of abuse, as well as to provide individual care for abused children and to provide advice for families.

7. Mr. DOEK said that it was important to bear in mind the devastating impact that 36 years of internal conflict had had on Guatemalan children and on the population as a whole. According to the report of the Truth Commission entitled "Memory of Silence", there had been no fewer than 400,000 victims, 42,000 human rights violations and 626 massacres, for which the armed forces had been responsible in over 90 per cent of cases. The Committee against Torture and the United Nations Verification Mission in Guatemala (MINUGUA) had noted a deterioration of the human rights situation in recent years, including a rising number of extrajudicial killings perpetrated by State police officers. Such acts of violence carried out with impunity were still a major concern, in spite of President Portillo's encouraging willingness to accept the State's responsibility for human rights abuses before the Inter-American Court of Human Rights.

8. He asked for a clarification of the situation with regard to the various versions of the new Children and Adolescents Code. As he understood it, enactment of the Code that had been adopted in 1996, which was repeatedly referred to in the report as an indication of real progress in the field of children's rights, had been postponed indefinitely. Consequently, the only relevant national legislation remained an earlier version of the Code, which dated from 1979, in respect of which MINUGUA had expressed serious doubts over its consistency with the Convention. A subsequent version of the Code, which had been supported by non-governmental organizations (NGOs), civil society and the churches, had been submitted to Congress in 1999, and he would be interested to learn why Congress had chosen to ignore it. The Government appeared to favour an even more recent draft of the Code, submitted in October 2000, which retained the "irregular situations" doctrine that the Committee had previously indicated was inconsistent with the Convention.

9. He expressed concern that the Government should be considering an approach that treated abandoned children as criminals, which would inevitably lead to unjustified arrests. Deprivation of liberty should be used only as a last resort, and children risked unfair restrictions

on their freedom under the "irregular situations" doctrine. Furthermore, articles 50 and 51 of the new Code did not appear to provide children with a clear right to legal defence. While the establishment of a specialist police unit for juvenile crime was to be welcomed, tighter controls were required on its discretionary powers under article 24 of the Code for it to have a positive impact.

10. Ms. OUEDRAOGO, referring to paragraphs 41 and 44 of the report, asked why only 21 of the 22 departments in Guatemala appeared to be covered by general measures of implementation. The Committee would also be interested to learn whether the Government intended to raise the legal age for marriage further, as 16 years was still too young. Similarly, why had the minimum age for employment not yet been set at 15?

11. She said she shared the concerns expressed by Mr. Doek regarding the Children and Adolescents Code, and inquired what the Government was doing to disseminate information about the new version to the general public.

12. She welcomed the creation of the Consultative Committee of International Organizations for the Comprehensive Protection of Children in Guatemala (CCOIPINGUA). However, she would welcome further details of the Government's role in that Committee. In particular, how did it ensure that its priorities were included in the agenda set by CCOIPINGUA?

13. Mr. CITARELLA noted that, pursuant to the Constitution, international human rights treaties ratified by Guatemala took precedence over domestic legislation. According to legal experts, no version of the draft Children and Adolescents Code was entirely in conformity with the Convention or indeed the Constitution: even the most recent version was apparently based on the "irregular situation" doctrine. The Convention would therefore prevail where any contradiction arose.

14. Ms. KARP said she was concerned that the suspension of the Children and Adolescents Code constituted an obstacle to the formulation of policies and the allocation of resources that would change the lives of children. What were the prospects for the legislation entering into force in the near future and what exactly was preventing its enactment? It had been alleged that the delay was partly due to the influence exerted on those in positions of authority by parties who were averse to any change in the legislation because of their involvement in the sale of children and their abduction for the purpose of inter-country adoption. Was there any truth in that allegation?

15. The Office of the Children's Ombudsman was reportedly a weak institution, possibly because of a lack of resources or because of the difficulty of challenging attitudes that were ingrained in society. She wished to know how the Office operated, whether it was easily accessible to children and whether any lessons had been learned from the cases dealt with to date.

16. In general, she was interested in hearing about action to disseminate the new messages contained in the Convention, for example the idea that children were bearers of rights, that they had evolving capacities and that they should participate in decision-making on matters affecting

them. If parents' behaviour was authoritarian, public awareness campaigns should be launched to change their attitudes. Unless the general public was open to new ideas, it would prove difficult for parliamentarians to treat children as partners in society.

17. Lastly, she asked what steps were being taken to enhance the role of NGOs in furthering children's rights and whether the potential of the social structures established by the Catholic Church was used to achieve the goals of the Convention.

18. Ms. CHUTIKUL asked who had been involved in the process of drafting the Children and Adolescents Code. Had NGOs participated and had any real consensus been achieved on the content? Given the aim of harmonizing domestic legislation with the provisions of international treaties, she was surprised to note that some provisions were incompatible with the principles laid down in the Convention. Perhaps the fact that the very concept of children's rights was still unpopular in Guatemala was reflected in the legislation enacted. Campaigns were clearly needed to change society's value system and attitudes.

19. She asked whether education was compulsory and, if so, until what age. Was there any conflict with the minimum age for employment and what action was taken when school attendance rates were low?

20. Mr. DOEK inquired about the effectiveness of bodies set up to coordinate the implementation of the Convention. The Commission for the Convention on the Rights of the Child (PRODEN) established in 1989 as the coordinating body for a number of government agencies, NGOs and departmental committees had reportedly taken very little action in any area and the National Children's Council was non-operational, allegedly as a result of the failure to enact the 1996 version of the Children and Adolescents Code.

21. It had been alleged that human rights NGOs were sometimes subjected to threats or intimidation and that their representatives or employees had been arrested. If those allegations were true, he wished to know whether investigations had been conducted and, if so, what their outcome had been.

22. According to the report, the Government was endeavouring to decentralize authority to local communities, but with little impact to date in terms of improvements in health care and education. He asked what stage had been reached in the decentralization process, especially with regard to the allocation of funds to local authorities. What was the bearing of such action on the rights of the child?

23. Ms. TIGERSTEDT-TÄHTELÄ, while welcoming the statistics on education and health provided by the delegation, expressed regret at the lack of data on trends in the budget appropriations for health and education. No figures had been provided either on children with disabilities or on the protection of children in need of alternative care. The written replies contained a detailed table showing the annual budget of the Welfare Department of the Office of the President. She asked how the Department's mandate compared with that of the ministries responsible for attending to children's concerns.

24. The written replies also listed a number of budgetary measures but it was unclear whether they were already being implemented or constituted policy goals. Reference was made, for example, to the allocation of resources at the national and municipal levels to ensure universal access to development programmes and child protection measures. She wished to know what proportion of the budget was allocated to the municipalities, whether the decentralization process required the enactment of legislation, how local communities were involved in decision-making and what provision was made for children's rights. Reference was also made to the principle of non-discrimination in budgeting. It was important to study disaggregated statistical data carefully in order to take remedial action on behalf of regions or categories of children that seemed to be disadvantaged. She asked whether international cooperation was reflected in the budgetary data, whether the tax reform referred to in paragraph 50 of the report had been implemented and whether a study had been made of the resources needed to enforce the Children and Adolescents Code.

25. The CHAIRPERSON, referring to the fact that the National Children's Council was inactive, asked what body in Guatemala held ultimate responsibility for implementation of the Convention.

The meeting was suspended at 11.15 a.m. and resumed at 11.30 a.m.

26. Mr. ARENALES FORNO (Guatemala) confirmed that, pursuant to article 46 of the Constitution, international human rights treaties took precedence over domestic legislation. The Convention was therefore enforceable by the courts. Where there was a conflict between existing domestic legislation and the Convention, the authorities were required to apply the provisions of the Convention. It followed that the impact of the suspension of the Children and Adolescents Code was not as disastrous as had been suggested, except perhaps in terms of the establishment of new institutions. The State's administrative policy was already based on the admittedly flawed Minors Code, which was still in force

27. Primary education was compulsory. The minimum age for employment was 14 years and the General Labour Inspectorate was required under the Labour Code to facilitate access for minors in employment to compulsory education.

28. Ms. MUNDUATE GARCÍA (Guatemala) said that the first version of the Children and Adolescents Code had been approved in 1996. It was the product of a process of debate and consultation involving various authorities at the departmental and ministerial levels, NGOs with considerable experience in the areas of children's rights, experts on child welfare and other advisers. The United Nations Children's Fund (UNICEF) had also provided support and advice. The Code had been approved by Congress and submitted to the President. But there had been mounting opposition from some sectors of society, which had carried out a detailed review of its provisions and found many discrepancies. The first to oppose it had been the churches, especially the Catholic Church, which enjoyed considerable historical influence with political ramifications. It had objected, for example, to the provision concerning freedom of religion. Criticism of the Code had also come from communities, parents, school associations and some branches of the media. The promulgation of the Code had therefore been deferred until 1998.

29. In the Guatemalan cultural environment, matters such as freedom of sexual preference were very sensitive issues. Young people lived with their families and usually had no sexual relations prior to marriage, which was often contracted at an early age and was sanctified by a church ceremony. It was feared that parental authority and parents' capacity to guide and instruct their children might be undermined by an instrument such as the Children and Adolescents Code. Parties involved in child trafficking and inter-country adoption had not intervened overtly but might indeed have worked covertly against the enforcement of the Code.

30. A new round of consultations had been launched and had resulted in the second version, which had secured the support of all religious denominations. As the issue of trafficking in children and adoption had not been addressed, the need for specific legislation on adoption was recognized. The new "agreed" version of the Code had been submitted to Congress in 1998 but had not been enacted. In April 2000 the 1996 version had been adopted but neither had entered into force. In 2000 the Congressional Committee on Children, Youth and the Family had drafted a bill which in some respects was not entirely in conformity with the Convention. The Congressional Committee and its advisers were in agreement on the need to revise the bill to bring it into line with the Convention, and were open to discussions with NGOs and other representatives of civil society on the best way to do so. Significant contrasts persisted in Guatemalan society following decades of conflict. The country was still learning, and reaching consensus was a long and difficult process.

31. The Government considered that it would be more effective to carry out extensive training of the police in the rights of the child rather than to establish a specialized juvenile police force. It was working with the United Nations Verification Mission in Guatemala (MINUGUA) and the United Nations Development Programme (UNDP) to spread knowledge of the rights of the child among police officers.

32. During the talks which had led to the drafting of the Children and Adolescents Code in 1996, a major role had been assigned to the Children's Ombudsman. Although difficulties had been encountered in enacting a final version of the Code, some key elements were not at all in dispute, and action had been taken by various agencies. For example, the Office of the Human Rights Procurator had begun to set up some 50 municipal offices and boards which worked with the Children's Ombudsman to carry out training in the rights of the child, including information on procedures for complaints of child abuse.

33. Under the Labour Code, the minimum age for employment was 14, and employers must give child workers an opportunity to study at school or at the workplace. While such provisions were not observed by all employers, the new Government was making an effort to improve the situation of child workers. The Ministry of Labour had tripled the number of labour inspectors, making more information available about the extent of the problem of child labour. As a result, the Social Cabinet had recently adopted a more ambitious national plan for the prevention and total eradication of child labour.

34. Dissemination of information on the rights of the child took place mainly by radio, or sometimes in schools. The Convention had been translated by a pilot programme into Chuj, an indigenous Mayan language. The Ministry of Education had asked for the support of UNICEF

in integrating the rights of the child in school curricula. The Government was engaged in a constructive dialogue with NGOs and the various churches on questions such as the treatment of juvenile offenders, street children, children at risk and victims of child abuse.

35. The country was divided into 21 administrative regions known as departments, in which there were 331 municipalities. While the governor for each department was appointed by the President of the Republic, mayors were elected by popular vote. One of the first steps toward decentralization had been the establishment of urban and rural development councils. At the departmental level, the councils included representatives of the governor's office and the municipalities concerned, along with the private sector, NGOs and in some cases the churches. At the municipal level, the councils included the mayor and representatives of Government institutions operating locally, such as the ministries of education, health, agriculture and the interior, as well as representatives of civil society. Under a proposal recently submitted to the President of the Republic, the departmental and municipal councils would include representatives of women's organizations and NGOs working for the rights of the child. A presidential commissioner had since January 2000 been looking into the best ways to carry out decentralization. It was a complex matter, which went beyond the question of political will, legal infrastructure or expertise in financial management; there was also a need for education, as some of the leaders elected at the local level lacked schooling and required preparation. Nonetheless, there had been some successes, such as a programme supported by UNICEF which was aimed at decentralizing the decision-making process and improving access to high-quality basic social services for children.

36. The Government was strongly committed to improving education by ensuring universal primary education and eradicating illiteracy, and had therefore increased the education budget by some 400 million quetzals. While much support for education and health programmes came from international cooperation programmes and social investment funds, loans from such institutions as the World Bank, Kreditanstalt für Wiederaufbau (KFW) and the Inter-American Development Bank accounted for still more, and supported such successful programmes as the Comprehensive Health Care System (SIAS). The Government was concerned about the high cost of addressing certain social problems such as child labour, child abuse, gangs and street children, which would require specialized staff capable of providing psychological and psychiatric support as well as social work and occupational therapy. In that regard, international backing was badly needed.

37. The Social Cabinet included representatives of the various ministries and services dealing with children, and was involved in decision-making when Government policies were formulated. Its secretariat, which had been assigned the task of drafting the report on the status of Guatemalan children for the World Summit for Children, attempted to issue reports annually to assist the Government in drawing up policies. The Social Welfare Department was the body responsible for children and youth at risk and juvenile offenders. It maintained child-care centres and a network of shelters and substitute care facilities, the aim of which was to avoid institutionalization of abused children whose placement had been ordered by a court. Care was provided for children with physical handicaps by NGOs and private institutions, and the Government ran three centres for children from needy families with varying degrees of mental

disability, including one for severely handicapped children, which provided 24-hour care. Five detention centres existed for juvenile offenders, and a parole system had been instituted for them in 2000. The Government also encouraged the establishment of alternative measures to deal with juvenile offenders.

38. One of the provisions of the peace accords called for tax revenue to reach a level of 12 per cent of the gross domestic product. Unfortunately, that had not yet come about, as consensus had not been reached on how to institute a tax reform. One proposal called for the Government to raise the value-added tax, but both the Government and Congress were reluctant to do so, as a direct tax of that kind would be especially hard on the poor. The Ministry of Finance had submitted proposals for other types of tax reform.

39. Mr. DOEK welcomed the Government's decision to support the version of the Children and Adolescents Code which had benefited from consensus. He hoped that the efforts to enact the Code in its new form would meet with success in the near future. In recent years, the peace process had led to some positive developments in combating discrimination, especially against women, girls and the Mayas, but discrimination was reportedly deeply rooted in society and still must be addressed. What steps had the Government taken in that regard? According to the State party's report the views of the child were not systematically taken into consideration, owing to the authoritarian nature of society. In that regard, the report referred to a process of reflection and awareness-raising on the subject of the best interests of the child. Could the delegation describe specifically what that process entailed?

40. The Committee was concerned about violence against children in the country. In May 1999 a street child had reportedly been wounded by four hooded men with firearms. There were allegations of sexual abuse and ill-treatment of street children by the National Police, including threats made if the victims tried to lodge complaints. Such mistreatment had been denounced by NGOs, but they had still not received any official response. Children were also the victims of domestic violence. What did the Government plan to do to address such problems and to ensure that the perpetrators of such acts would be brought to justice?

41. Ms. TIGERSTEDT-TÄHTELÄ said that the State party's notion of the best interests of the child summarized in paragraph 89, might more aptly be considered a definition of the right to development. Article 3 of the Convention should guide the State party in its interpretation of all other provisions. As a whole, the Convention imparted the idea that children had as much human dignity as adults, but were vulnerable and therefore required special attention. It also imparted the idea that children were sufficiently competent to participate in decisions concerning them. Article 3 posited that in all actions concerning children, their best interests must be the primary consideration. In practice, that meant that their perspective must be taken into account in all decisions affecting them. Consequently, child impact analyses should be undertaken before decisions were made in all matters specifically affecting children, which included such diverse areas as social security, city planning, the environment and the budget. Since article 3 did not define the concept of the best interests of the child, each State party must work out a definition that was appropriate to its situation, and incorporate it into the national legislation.

42. Ms. OUEDRAOGO, observing that paragraph 80 of the report indicated that the implementation of the principle of the best interests of the child was hampered by political and

economic constraints, lack of infrastructure and poor inter-institutional coordination, inquired what measures the State party was taking to surmount those problems. Paragraph 83 referred to article 6 of the Convention, and asserted that Guatemalan children were guaranteed the fundamental right to life. According to the written replies, however, 150 children were born daily without medical attention of any kind - an undeniable failure to protect the right to survival, life and development. Clarifications would be welcome. In view of the high rate of illegal abortions, which endangered the health and lives of adolescent girls, she would like to know whether reproductive health programmes had been established.

43. It would also be helpful to know how the two student members of the National Children's Council, mentioned in paragraph 87 of the report, were elected, and whether local councils existed. In addition, she would like to know what measures Guatemala was taking to protect the family. She would appreciate information on the practical implementation of the law providing that mothers could give their names to children whose fathers refused to recognize them; it would also be helpful to know whether and to what extent societal attitudes towards such children were changing.

44. Ms. AL-THANI inquired whether, in the view of the delegation, the high rate of malnutrition in rural areas resulted from a lower level of basic services. An imbalance in the provision of services constituted a form of discrimination. In that regard, she would like to know whether the Government intended to expand the food-for-education programme. It would also be helpful to know whether programmes had been initiated to change the attitudes of health providers toward disabled children. World Health Organization (WHO) estimates on the number of disabled persons in Guatemala were high; she would like to know whether the Government intended to undertake a study of the causes and scope of that problem.

45. Mr. AL-SHEDDI said he was concerned about the delay in the adoption of the Children and Adolescents Code. If in fact the interests of children were a priority, the Government, the churches and NGOs should work together to achieve a consensus. In addition, it would be useful to know what had been accomplished by the Commission for the Convention on the Rights of the Child in the 10 years since its formation.

46. He asked what measures the Government was taking to provide education to all Guatemalan children, to provide assistance and care to the thousands of children living in the street and to improve the rate of birth registration.

47. Ms. CHUTIKUL inquired whether education was compulsory by age or by grade, and whether the Government had considered raising the minimum working age to 15, to bring it into conformity with the ILO Minimum Age Convention, 1973 (No. 138). She would also like to know whether, and in what terms, the Constitution guaranteed freedom of religion, and whether that right could be invoked in the courts, in particular the child and juvenile courts.

48. She wondered whether the Ministry of Education required a birth registration certificate in order for children to enrol in school, and whether the Government had considered lifting such a requirement in order to enhance access to education.

49. Mr. CITARELLA inquired whether the Government had considered undertaking a study of the new Children and Adolescents Code to assess its compatibility with the Convention and the Constitution. With reference to paragraphs 101 and 102 of the report (CRC/C/65/Add.10), he inquired what was meant by freedom of religion, and whether that right was applicable in the schools. With reference to paragraph 106, he inquired what restrictions were placed on the freedom of movement of young persons.

50. He had been disturbed to learn that the torture of children had increased in Guatemala in recent years, that compensation was either not granted, or granted tardily, and that the suspected perpetrators enjoyed impunity. Both the Commission on Human Rights and the Casa Alianza Association had observed that no procedures were in existence to respond to that alarming phenomenon. Clarifications would be welcome.

51. Ms. KARP said that it was preferable to introduce a new draft law incorporating the elements of the Convention rather than to attempt to insert related provisions into another draft law under consideration. She urged the Government to formulate such legislation in a timely manner.

52. She would like to know how the children's ombudsmen were chosen, what powers they enjoyed and what was the scope of their activities. It would also be useful to know whether training programmes had been established for professionals working with children. She had heard no answer to a question raised about threats against NGOs and difficulties experienced by NGOs in carrying out their work.

53. In addition, it would be helpful to know the status of proposed draft legislation to tackle the troubling problem of children kidnapped or sold for adoption, and what other measures the Government had envisaged to stem that phenomenon. The description, on page 5 of the written replies, of the conditions of life of displaced children, indicated that all their rights were being violated. She would like to know what programmes had been launched to ensure the basic rights of all displaced children, in particular to assist children traumatized by war.

54. Commending the Government of Guatemala for having acknowledged its responsibility in cases of brutality against children heard by the Inter-American Commission on Human Rights, she inquired whether compensation had been paid to the families of the murdered children and what consequences had arisen from the findings of the Truth Commissions that had investigated those incidents.

55. The CHAIRPERSON inquired what progress Guatemala had made in eliminating discrimination against indigenous children, poor children and girl children. She would also like to know, with reference to paragraph 124 of the report, whether any specific policy had been established to combat violence against children since the report's publication.

The meeting rose at 1 p.m.